

**AMENDMENT**

**U.S. Appln. No. 10/634,125**

**REMARKS**

On page 3 of the Office Action, the Examiner reminds Applicants' of their duty of disclosure.

Applicants submit herewith an Information Disclosure Statement bringing to the Examiner attention, *inter alia*, to the reference cited at page 28, lines 19-20 of the present application, as well as co-pending application Serial Nos. 10/525,385 and 10/534,734.

In addition, on page 3 of the Office Action, the Examiner requests that the specification be checked to correct any minor errors.

Applicants are not aware of any minor errors within the specification which need to be corrected.

On page 4 of the Office Action, the Examiner rejects Claims 1-4 [*sic* Claims 1-8] under 35 U.S.C. § 112, first paragraph as lacking written description.

Specifically, the Examiner states that the specification only teaches whey protein, and not any "protein that does not coagulate at pH 3-4".

For the following reasons, Applicants respectfully traverse the Examiner's rejection.

The specific protein that does not coagulate at pH 3-4 is not critical to the present invention, and non-limiting examples of such are given at page 7, lines 16 *et seq*, e.g., whey protein concentrate, whey protein isolate, desalted whey, and protein hydrolysates having a number average molecular weight of 500-10,000, such as of the proteins given at page 9, lines 1-6, i.e., hydrolysates of casein, gelatin, soybean protein and wheat protein. Thus, the invention is not limited to whey protein.

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Nonetheless, in order to advance prosecution, Claim 1 had been amended to further define the protein that does not coagulate at pH 3-4.

Accordingly, Applicants respectfully submit that the claims clearly and definitely recite the invention of interest, and thus request withdrawal of the Examiner's rejection.

On page 10 of the Office Action, the Examiner rejects Claims 1-4 (*sic* Claims 1-8) under 35 U.S.C. § 103 as being unpatentable over Nakagawa et al in view of Kitabatake et al.

Specifically, the Examiner states that Nakagawa et al teaches a composition and process for making a nutritional supplement using whey protein containing vitamin D and other ingredients, which embraces the claimed invention. The Examiner notes that the claims differ from Nakagawa et al in claiming specific ratio and ranges of ingredients and a product in the form of a gel. However, the Examiner contends that such ratios and ranges would have been obvious, and a gel form would have been obvious in view of Kitabatake et al.

For the following reasons, Applicants respectfully traverse the Examiner's rejection.

The present invention provides a promoter for increasing plasma volume. In the present invention, it is important that the promoter is a gel composition which comprises agar as an essential component.

Nakagawa et al fails to teach or suggest the use of agar as claimed in the present invention.

Furthermore, Kitabatake et al does not provide the deficiencies which exist in Nakagawa et al.

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Kitabatake et al teaches on column 1, lines 39-54, that the use of the agar is not advantageous. Specifically, Kitabatake et al states in column 1, lines 38-45 as follows:

Polysaccharides or gums such as agar, lginic acid, pectin and carrageenan, animal proteins such as gelatin and vegetable proteins such as glycinin and gluten and various synthetic polymers have been mainly used as the thickening and gelling agents in the commercial products such as foodstuffs, pharmaceuticals and cosmetics. However, they are not economical and insufficient in function and nutrition, and... (*Emphasis and underline added*)

Further, Kitabatake et al states in Example 2-5 as follows:

...Contrary to it, a gel of the same strength as the gel prepared by this Example was prepared by using agar. In this gel, shrinkage and water separation occurred by freezing and thawing as mentioned above. (*Emphasis and underline added*)

It is clear that Kitabatake et al teaches that the use of agar is not advantageous. In other words, Kitabatake et al teaches away from the present invention.

Accordingly, Applicants respectfully submit that the present invention is not taught or suggested in Nakagawa et al, alone or in view of Kitabatake et al, and thus request withdrawal of the Examiner's rejection.

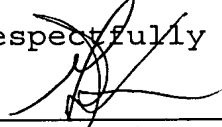
In view of the amendments to the claims and the arguments set forth above, reexamination, reconsideration and allowance are respectfully requested.

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The Examiner is invited to contact the undersigned at his Washington telephone number on any questions which might arise.

Respectfully submitted,

  
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